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OFFICE OF PETITIONS

In re Application of :
David Meisel :
Application No. 09/772,736 : DECISION GRANTING
Filed: 30 January, 2001 : PETITION
Attorney Docket No. MIA-10004/36 :

This is a decision on the renewed petition filed on 22 October, 2003, which is treated as a petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional applications.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after 29 November, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) of the prior-filed application, unless previously submitted;¹

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

¹Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number).

The present pending nonprovisional application is a continuation-in-part of prior-filed Application No. 09/387,395, filed on 2 September, 1999 (now U.S. Patent 6,194,643, issued on 27 February, 2001), within twelve months of the filing date of the prior provisional application No. 60/099,081, filed on 4 September, 1998, and which is the earliest-filed case for which benefit is claimed. A reference to the prior provisional applications has been included in an amendment to the first sentence of the specification following the title.

The present nonprovisional application was filed after 29 November, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(5). Also, the reference to the prior-filed provisional applications was submitted during the pendency of the nonprovisional application for which the benefit is sought.² Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 119(e), the petition to accept an unintentionally delayed claim to benefit to prior-filed provisional Applications Nos. 60/099,081, 60/104,920, 60/109,169, 60/116,746, 60/136,188, and 60/144,969 is granted.

A corrected filing receipt which includes the benefit claims to the provisional applications accompanies this decision on petition.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

The \$1,300.00 fee required by 37 CFR 1.78(a)(6) has been received.

²See 35 U.S.C. § 119(e).

The application is being forwarded to Technology Center 2800 for processing the amendment filed on 22 October, 2003, and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional applications listed above, No. 60/099,081, filed on 4 September, 1998; No. 60/104,920, filed on 20 October, 1998; No. 60/109,169, filed on 20 November, 1998; No. 60/116,746, filed on 22 January, 1999; No. 60/136,188, filed on 27 May, 1999, and No. 60/144,969, filed on 21 July, 1999.

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.



Charles A. Pearson
Director, Office of Petitions

Encl: Corrected Filing Receipt